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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1951.

No. .....

AIR LINE DISPATCHERS ASSOCIATION A. F. of L. and MARVIN C. MERRILL, PETITIONERS,

vs.

THE NATIONAL MEDIATION BOARD, JOHN THAD SCOTT, CHAIRMAN, FRANCIS O'NEILL, JR., and LEVERETT EDWARDS, MEMBERS, RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

Air Line Dispatchers Association, A. F. of L., and Marvin C. Merrill, as president of Air Line Dispatchers Association, A. F. of L., pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit dated May 17, 1951, (R. 19) which in turn affirmed the judgment of the

District Court of the United States for the District of Columbia dated April 20, 1950 (R. 10).

OPINIONS BELOW

The opinion of the District Court for the District of Columbia is at (R. 8). The opinion of the Court of Appeals for the District of Columbia is at (R. 13).

JURISDICTION

The Supreme Court of the United States has jurisdiction because of the provisions of 28 U. S. C. A. Sec. 1254, paragraph (1) (Judicial Code Sec. 240 as amended), and 28 U. S. C. A. Sec. 2101.

QUESTIONS PRESENTED

1. Are airline employees covered by Title II of the Railway Labor Act, as amended, limited to those performing work defined in the orders of the Interstate Commerce Commission (as held by the Court of Appeals below R. 17), or does the Civil Aeronautics Act and its regulations govern.

2. Are the rights of representation for collective bargaining, granted by the Railway Labor Act, as amended, to be denied employees of a common carrier by air which is a Delaware corporation with its principal office in the City of New York, simply because the routes of such employer granted it by the Civil Aeronautics Board extend beyond the continental United States, and such employees are from time to time and sometimes continuously stationed outside the United States and transferred to and from the United States in the performance of their duties as required by the Civil Aeronautics Act, and the Regulations adopted thereunder; resulting from a refusal of the National Mediation Board to investigate the representation dispute.

3. Does the investigation of a representation dispute by the National Mediation Board require any extra-territorial application of such Act, simply because the routes of the

airline employer, granted by the Civil Aeronautics Board under the Civil Aeronautics Act, extend beyond the continental United States and its territories, where such employees are required by reason of their duties, to be stationed from time to time, and sometimes continuously, outside the United States and its possessions; and are transferred to and from the United States to foreign countries along the lines of said air carrier, as directed by the Civil Aeronautics Administrator pursuant to the Civil Aeronautics Act, and where said employer is a Delaware corporation with its principal office in the City of New York.

4. Is the National Mediation Board under Section 152, ninth, of the Railway Labor Act as amended, required or permitted to refuse to process an application by a labor organization, to investigate and certify a representation question among employees of a Delaware corporation with its principal office in the City of New York, which is an American Flag common carrier by air, certificated and operating pursuant to the Civil Aeronautics Act; when such employees are subject to such employer's continuing authority to supervise and direct the manner of rendition of their services, wherever located.

STATUTES AND REGULATIONS

The Railway Labor Act as amended Title 45 U. S. C. Sec. 151 et seq. particularly Sec. 152, ninth, and Title 45 U. S. C. Sec. 161-186, Civil Aeronautics Act, Title 49 U. S. C. Sec. 401-402 and 481 Subsec. L (3) (4), and the Civil Air Regulations parts 27, 41.84, 41.85, 41.93, 41.0, and Orders of the Interstate Commerce Commission, Ex Parte No. 72, Feb. 5, 1924, are set out in the Appendix, infra, pp. 16-19.

STATEMENT

The Court of Appeals has construed the statutes to deny collective bargaining to an important professional, licensed, group of employees of American Flag air carriers. In

refusing to hold otherwise the Court of Appeals has decided an important question of Federal law which has not been, but should be settled by this Court. The labor relations of all of the pilots, dispatchers and other skilled groups operating United States Flag air carriers internationally have been frustrated. The Civil Aeronautics Board reports that American Flag carriers are certificated to operate 203,678 route miles internationally, and to serve 239 foreign points in all the continents of the world, and that for a two year period ending April 14, 1950, three million passengers were transported throughout the world without a fatality.

The only factual basis for the decisions of the Courts below and of this Court are the facts alleged in the petitioners amended complaint since such allegations are admitted for the purposes of this case, the District Court having sustained a motion to dismiss (R. 10), and the Court of Appeals having affirmed the District Court's decision. (R. 19).

In its opinion the Court of Appeals departed from the factual basis of this case contained in the amended complaint of the appellants. That Court as the factual basis for it's decision stated:

> "the company operates and the dispatchers are employed solely outside the continental limits of the United States." (R. 13).

The amended complaint truly describes the routes of the carrier as extending through the Panama Canal Zone and into the City of Miami, State of Florida. (R. 3).

Petitioners by their amended complaint (R. 1) complained that the respondents had failed to comply with the Railway Labor Act as amended when they dismissed an application of the petitioners for investigation of a representation dispute and certification as bargaining agent on behalf of the aircraft dispatchers in the employ of Pan

American-Grace Airways, Inc. That petitioner is a labor organization, that the National Mediation Board has the duty prescribed in the Railway Labor Act, to investigate representation disputes and certify the representative for collective bargaining. (R. 2). That the dispatchers are a recognized class or craft licensed under the Civil Aeronautics Act, and required by Civil Air Regulations to work and be stationed all along the routes of the carriers. That by reason of the world-wide routes of American Flag air carriers, some of these dispatchers are required to be stationed from time to time, and sometimes continuously outside the United States, and to be transferred to and from the United States. (R. 3). That the employer, Pan American-Grace Airways, Inc. is a Delaware corporation with its principal offices in New York, that the employer is a common carrier by air engaged in foreign commerce and transporting mail for and under contract with United States. That the routes of the employer certificated by the Civil Aeronautics Board run from Miami, Florida, to the Canal Zone and thence through South American countries. (R. 3). That both the employer and the employees fulfill completely the definitions of each in the Railway Labor Act as amended. That the petitioner is the only labor organization representing aircraft dispatchers in the world. That the petitioner properly filed its application with the National Mediation Board and furnished to such Board original, duly executed authorizations from all of the aircraft dispatchers in the employ of Pan American-Grace Airways, Inc. That the Board held a hearing directed to the sole question of its legal jurisdiction to deal with the matter and took no other action than to dismiss the application. That the action of the Board wholly failed to comply with its statutory duties and completely denied to the aircraft dispatchers their right of representation for collective bargaining (R. 5).

The Board moved to dismiss the complaint. (R. 7). The District Court granted this motion upon the ground of

lack of judicial power to review any action or inaction of the Board. (R. 8). The Court of Appeals held that the Courts did have such power, (R. 16), but upon review affirmed the lower court upon the ground that any employees stationed outside the United States were beyond the purview of the Railway Labor Act as amended. (R. 18).

The Court of Appeals besides basing its opinion upon a mistake in fact, misinterpreted Title II of the Railway Labor Act as only applying to railroad employees, as defined by the Interstate Commerce Commission (R. 17). The employees performing work defined by the Interstate Commerce Commission have remained substantially unchanged since 1924 I. C. C. Ex. Parte No. 72, February 5, 1924 when no airline existed.

The same Court, District of Columbia Court of Appeals in the case of *Brotherhood vs. I. C. C.*, 147 Fed. 2nd 312, (Cert. den. 325 U. S. 860) held that such power of the I. C. C. meant only to state whether an individual was an employee, or a subordinate official, or an official; and did not mean that the I. C. C. had power to order whether a given carrier was subject to the Railway Labor Act or whether a given group of employees were subject to the Railway Labor Act. Precisely the Interstate Commerce Commission holds the same way, *Ex. Parte No. 72 (Sub. No. 1)* August 1941 - 246 I. C. C. 703.

REASONS FOR GRANTING THE WRIT

The Court of Appeals for the District of Columbia has decided a question of general importance, and a question of substance relating to the construction and application of statutes of the United States, which have not been, but should be settled by this Court.

Taking up the questions in the order presented:

ONE: The Court of Appeals below based its decision upon a reason which would deny to all airline employees,

domestic or international, their rights of collective bargaining. The Court of Appeals held that Title II of the Railway Labor Act is no broader in definition of employee than is Title I (R. 18). Title I dealt only with railroads, and the classes or crafts of their employees are those performing work defined in the orders of the Interstate Commerce Commission. No orders of the Interstate Commerce Commission define any work of employees of airlines either domestic or foreign. (*I. C. C. Ex. Parte No. 72,* Feb. 5, 1924.) On the contrary the airline employee groups and the work performed by airline employees is defined in the Civil Aeronautics Act and the Civil Aeronautics Regulations promulgated in accordance with said Act by the Civil Aeronautics' Board. (Civil Air Regulations Part 41.93). These regulations define and require licensing of aircraft dispatchers. (Civil Air Regulations Part 27). These regulations require them to be stationed out along the world-wide routes of their employers, (Civil Air Regulations Parts 41.84 and 41.85), as well as in the United States. (Civil Air Regulations Parts 61.1 and 41.0), and the individuals are constantly transferred back and forth. It is inconceivable that federal law on one hand would require a dispatcher to be sent to perform his duties at Lima, Peru, for his employer, and on the other hand deny him the right to choose his collective bargaining representative simply because he was there.

TWO: This poses the question as to the propriety of the refusal of the National Mediation Board to perform its duties with respect to airline employees who happen at any given time to be working outside the United States. To do this the Board would separate classes or crafts geographically, *Switchmens' Union vs. National Mediation Board* 135 Fed. 2nd, 785, and hold that while an employee is abroad he loses his coverage protection of the law, and then regains it when transferred to the United States, and then again loses it when re-transferred to foreign countries. Followed to the

last degree, each flight crew on every foreign bound plane would have statutory protection only until the plane reached the three mile limit. Such separating of crafts and separation of individuals is incongruous but necessarily follows from the Board's and lower Court's decision.

THREE: The function of the Board commanded of it by the Act is actually performed by mail ballots and requires no extra territorial application of the Act, (Railway Labor Act, Sec. 152, ninth). The same mail elections are necessarily held along the far flung routes of purely domestic airlines, and the work of the Board through a mediator or by the Board itself, is performed at the home office of the Company, in this case New York City, or at the office of the Board in the City of Washington, where the ballots are prepared, mailed to the employees and counted and canvassed on their return. The final act of the Board, that of certification, has its sole impact on the employer at its home office, again in New York, with no regard for the routes the planes fly, or their terminals along such routes, or where any particular employee or group is stationed. The location, in or out of the United States, where the employee performs his duties, is no criterion for the determination of the question as to his personal secret choice of his bargaining representative.

FOUR: This question emphasizes the importance of the lower court's decision construing the two Acts of Congress; the Railway Labor Act as amended, and the Civil Aeronautics Act. The two are tied together by the Civil Aeronautics Act, but by the lower court's decision, only geography is important; and a custom of the Mediation Board, based on its railroad practice, and without support or approval by any court, is inappropriately applied to air transportation.

The questions hereby presented have never been decided by this Court. The Railway Labor Act as amended contains

no geographical limitation by term or inference. The Civil Aeronautics Act is world-wide in scope and operation by its very terms.

For these reasons it is respectfully submitted that this petition should be granted.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

BRIEF

The facts are stated in the petition pages 3-9 which are simply the facts pleaded in the petitioners' amended complaint in the District Court below.

ARGUMENT

The Board and the Court of Appeals below have disregarded the differences between air transportation and rail transportation.

This Court has pointed out the distinctions in the case of *Chicago and Southern Airlines, Inc. vs. Waterman Steamship Corp.*, 333 U. S. 103, as follows:

> "But these resemblances must not blind us to the fact that legally as well as literally air commerce, whether at home or abroad, soared into a different realm than any that had gone before * * *. A way of travel which quickly escapes the bounds of local regulative competence called for a more penetrating, uniform and exclusive regulation by the nation than had been thought appropriate for the most easily controlled commerce of the past * * *. However useful parallels with older forms of transit may be in adjudicating private rights, we see no reason why the efforts of the Congress to foster and regulate developments of a revolutionary commerce that operates in three dimensions should be judically circumscribed with analogies taken over from two dimensional transit."

Customs of the National Mediation Board applicable to railroads which stop at the shore line may not be applied to airlines which daily fly around the world.

Privileges granted by the Congress to airline employees may not be frustrated and denied because they do not work for railroads.

The decision of the Court below imagines extra territorial difficulties where none exist. It is no more difficult for the Board to ascertain the employee's choice of his bargaining representative by an air mail ballot sent from New York to Buenos Aires than it is by one sent from New York to Portland, Oregon. In fact were the railroads employee's ballot mailed by train to Portland and by air to Buenos Aires, the air transported ballot would be returned to New York quicker than that sent by rail.

The question involves only the method of determining the workers choice of his bargaining representative. This choice, relating as it does to an American Flag Air Carrier is strictly a right leading to a relationship impacting solely on the employer. The statute grants the right, the Board identifies the representative, *Switchmen's Union of North America vs. National Mediation Board* 320 U. S. 297.

Comparison of the Railway Labor Act, Title I and its amendment Title II inferentially appear to be the basis for the decision of the Court of Appeals. The Court refers to the wording of Section 202 of the Act as the logic of its decision. Clearly, Section 202 merely grants to the employees of Air Carriers the same rights and opportunities theretofore enjoyed by employees of rail carriers, the description of such air carriers is in Section 201. Section 202 extends these rights to such employees not by way of limitation but by way of amplification. Any other interpretation would result in incongruities and complete frustration. That Section adds to the definitions contained in Title I, the employees of the airlines of the United States wherever they may fly by giving them the same opportunities and privileges that railroad employees had previously enjoyed.

Before the Board and before both of the Courts below

respondents argued that to grant petitioners prayer would create chaos abroad because of differences in legal hours of work, compensation, vacation rights, and so forth.

No such questions are presented here. The right petitioner seeks here is solely representation. Such right having been awarded, bargaining will result and agreements must be reached accommodating any contradictory situations that may be found to exist concerning hours of work, compensation, and other working conditions.

The Court of Appeals cites the case of *Foley Bros. vs. Filardo,* 336 U. S. 281, as supporting its decision. This citation demonstrates the basic error of the decision. The Foley case dealt with the application of legal hours of work provided by United States law to work performed in countries of the Near East. No such question is presented here.

Should the Court of Appeals decision stand, no collective bargaining and rights of representation for collective bargaining could ever exist among the employees of any United States airline operating from the United States to and through any group of foreign countries; since neither the United States nor any single foreign country would contain a majority of any class or craft employed by the airline.

The industrial peace of the air transportation system which our Government has fostered and built at so much expense should not be endangered by a denial of lawful rights to these employees.

The Board's decision from which the Court of Appeals quotes in its opinion, refers to collective bargaining agreements which this petitioner has with many other airlines operating combination routes, both foreign and domestic. Such agreements would be made of questionable validity should this decision remain unchallenged and the labor relations of all American Flag carriers would be destroyed

at the source, by the denial of the individual employee's right to choose his representative for collective bargaining purposes.

The importance of the questions presented may be briefly summarized.

International air commerce carried on by American Flag carriers, most of which are also domestic because they operate both domestically and internationally, is vital to the national defense, and to the national welfare. The labor relations of such carriers are regulated by the Railway Labor Act as amended. Flight crews and ground control stations are manned by employees, who work part of the time in this country and part of the time abroad, and frequently the change is instantaneous. Such transportation may not be interrupted by labor strife.

The most prolific source of disputes has been representation disputes, *Virginian Railway Cmpany vs. System Federation No. 40,* 300 U. S. 515-563, l. c. 546.

The labor practice of all of the other airlines except Pan American-Grace Airways, Inc. had been, until the decision of the National Mediation Board in this case, based upon the valid assumption that these groups of employees were entitled to collective bargaining under the Railway Labor Act as amended. The denial of such rights by the decision of the Court below will effectively destroy labor peace in this important industry.

The profession of aircraft dispatcher is a creature of American regulations as they do not exist on foreign airlines.

It is believed that the Court of Appeals held as it did because of undue consideration for the Interstate Commerce Act and its admitted application to ground transportation. (R. 17). The Court has disregarded the Civil Aeronautics Act cited in the petitioners amended complaint (R. 2). This

Act occupies the same position with respect to Title II of the Railway Labor Act (air carriers and their employees) as does the Interstate Commerce Act to Title I of the Railway Labor Act (ground transportation and employees). The definitions contained in Title II of the Railway Labor Act are not restricted by the definitions in Title I but enlarge them to cover air commerce.

The Court of Appeals correctly stated that the Interstate Commerce Act applied only to such "foreign commerce" as took place in the United States (R. 17) when ground transportation was involved, however, the broadening amendment of the Railway Labor Act consisting of Title II and the reference to that Act in the Civil Aeronautics Act clearly shows the intent of the Congress to grant to employees of carriers by air, wherever working, the representation and bargaining privileges theretofore enjoyed by railroad employees.

The Civil Aeronautics Act and Title II of the Railway Labor Act contain no restrictions on foreign commerce but the elaborate regulations cover every detail of foreign air commerce engaged in by United States carriers around the world.

In the hearings before Congressional Committees the intent of the Congrees may be ascertained.([1])([2])

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[1]Hearings before Committees on Interstate and Foreign Commerce on H. R. 9738, 75th Cong., 1st Sess. (1937), pp. 237, 295. Witness Behncke, President Air Line Pilots Association. Page 237:

"Let us go on to paragraph (2) of the labor section we are proposing to be included in H. R. 9738, which reads as follows:

'It shall be a further condition upon the holding of a certificate by any carrier subject to this title that such carrier shall comply with Title II of the Railway Labor Act, as amended.'

"One of the principal purposes behind this paragraph is to secure better compliance with the Railway Labor Act insofar as domestic carriers are concerned, but the principal purpose is to leave no doubt as to its applicability to foreign operations, especially insofar as compliance is concerned. The reason for this is that our vast foreign air network starts and extends almost wholly beyond the borders of the United States. We all know that it is sometimes

CONCLUSION

Your petitioners respectfully submit that the final determination by this Court of the questions of law involved in this case is of the utmost importance to the airlines of the United States and to the labor organizations of the United States representing airline employee groups.

Certiorari should therefore be granted.

Respectfully submitted

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[1]Continued—
hard to secure compliance with a law of the United States when it applies to people and companies operating almost wholly beyond the borders of the United States. Therefore, the purpose of this paragraph (2) is to assure compliance with the Railway Labor Act by making it a condition of the certificate under which these foreign contractors will operate. In other words, the practical result will be that they must comply with the terms of their certificate and there may be a question about their complying with the law itself. This section is very necessary not only to the pilots but to all other American air workers, not only in this country but those who are employed by American companies operating to and through foreign countries and living in foreign countries."

Page 295:

"The following is the section of our proposed amendment to S. 2 which pertains to title II of the Railway Labor Act:

'(3) That the holder of such certificate shall comply with all the provisions of title II of the Railway Labor Act and any future amendments thereto.'

"The operators have objected very strenuously to the inclusion of this section, and they say that it is superfluous. The pilots disagree because this section applies not only to pilots but to all other air workers and will be especially beneficial to American pilots and other American personnel working for the Pan American and other foreign American operations. The reason for this is a very simple one.

"It is not always possible to enforce American laws in foreign countries even though American companies are financed by American dollars. It is, however, very easy to enforce a condition of a contract or a certificate of convenience and necessity because then you control the situation through the purse strings of the United States Treasury which is paying the bill. In other words, this provision of the pilots' proposed amendment to S. 2 makes compliance with the Railway Labor Act a condition of the holding of a certificate of convenience and necessity.

"Summarizing, this means that American companies engaged in foreign operations financed by American capital will be forced to give

APPENDIX

Railway Labor Act, Sec. 152, ninth:

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier."

Railway Labor Act, Sec. 151:

"(2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of

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[1]Continued—
American workers a square deal. In other words, in a situation of this kind a condition of contract or the holding of a certificate of convenience and necessity would be far stronger than an American law which these companies would very quickly find an excuse to violate, and an enforcement would be seriously handicapped. The inclusion of the pilots' section in its present form would result in orderly development of the industry both in foreign and domestic operations and prevent serious labor troubles. Its exclusion would be a step backward into chaotic conditions that existed before the pilots' Section 13 was included in the present air-mail law.
"In other words, the pilots' section will act as a bulwark against the ravishes of greed, unfairness, arbitrary actions against the employees in the American air transport industry both here and abroad. Its exclusion will, on the other hand, mean confusion, endless trouble, all of which will be harmful to the normal development of the industry."

[2]Witness Gorrell, President of the Air Transport Association.
Page 450:
"I invite your attention, further, to the circumstance that the fourth paragraph of the proposal here made to you by the Pilots Association states that a certificate holder under this projected Part III of the Interstate Commerce Act, shall comply with the Railway Labor Act and further amendments thereto. Such a provision is superfluous and redundant, inasmuch as every such carrier is and would be automatically subject to the Railway Labor Act. * * *"

employment or otherwise, of the right of employees to join a labor organization:

"(3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter;

"(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions.

"(5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions."

Railway Labor Act, Sections 201-202:

"Section 201. All of the provisions of Title I of this Act, except the provisions of Section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

"Section 202. The duties, requirements, penalties, benefits and privileges prescribed and established by the provisions of Title I of this Act, except Section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent specifically included within the definition of 'carrier' and 'employee,' respectively, in Section 1, thereof."

Civil Aeronautics Act, Section 401 (3):

"(3) 'Air Commerce' means interstate, overseas, or foreign air commerce or the transportation of mail by

aircraft or any operation or navigation of aircraft within the limits of any civil airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce."

Civil Aeronautics Act, Section 481, subparagraph (L) 3 and (L) 4:

"(L) 3. Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

"(L) 4. It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with Sections 181-188 of Title 45. (Railway Labor Act)."

Railway Labor Act, Section 152, ninth (continued):

"Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of the their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier."

Civil Air Regulations, Part 27 (paraphrased):

This regulation defines the citizenship, education, knowledge, experience and skill of the aircraft dispatcher and requires examinations, inspections and the holding of a certificate for an individual to occupy such position.

Civil Air Regulations, Part 41.0 (paraphrased):

> This regulation prescribes the requirements for air transportation outside the continental limits of the United States throughout the world, requiring operating certificates and more detailed regulation.

Civil Air Regulations, Part 41.84:

> "Dispatchers, number and location 'the air carrier' shall provide an adequate number of certified aircraft dispatchers located at such points as may be necessary to insure safe operations."

Civil Air Regulations, Part 41.85:

> "Each dispatcher shall hold a valid aircraft dispatcher certificate issued in accordance with the provisions of Part 27 of this sub-chapter."

Civil Air Regulations, Part 41.93:

> "Dispatching authorization. Flights shall be started only on the authority of an aircraft dispatcher qualified for the route. * * *".

Orders of Interstate Commerce Commission, Ex Parte No. 72, February 5, 1924. (paraphrased):

> These regulations designate the classes of employees that are to be included within the term "subordinate official" on railroads as provided by Title III of the Transportation Act of 1920. There were no scheduled air transportation carriers in 1924.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951

No. 220

AIR LINE DISPATCHERS ASSOCIATION AND MARVIN C. MERRILL, *Petitioners*

v.

THE NATIONAL MEDIATION BOARD, *et al.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 8) is not reported. The opinion of the court of appeals (R. 13) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on May 17, 1951 (R. 19). The petition for a

writ of certiorari was filed on August 3, 1951. The jurisdiction of this Court is invoked under 28 U. S. C. 1254.

QUESTION PRESENTED

Whether the provisions of Section 2, Ninth, of the Railway Labor Act are applicable to representation disputes involving employees in foreign countries of an American corporation engaged in foreign commerce.

STATUTES INVOLVED

The Railway Labor Act, 44 Stat. 577, as amended, 45 U. S. C. 151 *et seq.*, provides in pertinent part as follows:

> Section 2. Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation,

the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph. [45 U. S. C. 152 Ninth.]

Section 201. All of the provisions of title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service. [45 U. S. C. 181.]

> Section 202. The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees in the same manner and to the same extent as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, in section 1 thereof. [45 U. S. C. 182.]

The Civil Aeronautics Act, 52 Stat. 977, as amended, 49 U. S. C. 401 *et seq.* provides in pertinent part as follows:

> Section 401 (l) (4). It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with title II of the Railway Labor Act, as amended. [49 U. S. C. 481 (l) (4).]

STATEMENT

Petitioner Air Line Dispatchers Association is a labor organization which represents aircraft dispatchers employed by various commercial air carriers (Compl., pars. 2, 4, R. 3-4). In June, 1948, the Association applied to the respondent Board in reliance upon Section 2, Ninth, of the Railway Labor Act for an investigation of an alleged representation dispute among aircraft dispatchers of the Pan American Grace Airways, Inc. (hereinafter referred to as "Panagra"), and for certification of the Association as the collective bargaining agent

of these dispatchers (Compl., par. 11 R. 5). After a hearing as to jurisdiction, the Board found that all of Panagra's operations are conducted outside the continental limits of the United States (Appendix,[1] p. 13), and that Panagra employs in operations in Latin America some twenty airline dispatchers, all of whom reside and perform their services in Latin America (Appendix, p. 19).[2] The Board dismissed petitioner's application, stating that:

> There does not appear to the Board to be any constitutional impediment on the power of the Congress to extend the right, privileges and duties of the Railway Labor Act to employees based in foreign countries employed by United States carriers by air but in the opinion of the Board the Act as it presently exists does not grant such rights. The Board fails to find any specific direction in the Act, as amended, permitting it to extend its jurisdiction beyond the continental limits of the United States and its territories. [Compl., par. 13, R. 6; Appendix, *infra*, p. 25.]

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[1] The Determination of the Board is printed as an appendix to this brief (*infra*, p. 13).

[2] Petitioners rely upon an allegation of the complaint as establishing, for present purposes, that Panagra's routes extend through the Panama Canal Zone and into Miami, Florida (Pet. 4). The complaint does not, however, controvert the factual premise of the Board's decision that the particular employees on whose behalf certification was sought were stationed in South America (Appendix, *infra*, p. 19). The

In May, 1949, petitioners commenced the present action for a declaration that the Board has jurisdiction, and for a mandatory injunction requiring it to accept jurisdiction, of their application for adjudication of the alleged representation dispute (R. 2). The respondents moved to dismiss the complaint in this action for lack of jurisdiction, and for failure to state a cause of action (R. 8). In a memorandum opinion filed in April, 1950 (R. 8), the district court concluded that no judicial review of Board orders under Section 2, Ninth, of the Railway Labor Act is authorized. Accordingly, it dismissed the action.

On appeal, the court below ruled that the district court had jurisdiction to entertain the action (R. 13-18). On the merits the court of appeals upheld the Board's decision that the Railway Labor Act is not extraterritorial in application. The

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issue raised by the complaint, and the issue here, is whether employees based outside the United States are within the coverage of the Railway Labor Act.

Petitioners' statement of Questions Presented is also somewhat misleading, in that it suggests that the employees involved are "transferred to and from the United States in the performance of their duties" (Question 2, Pet. 2). It is true that the complaint asserts that "a substantial number" of the *members* of appellant Association "are from time to time and sometimes continuously stationed outside the continental United States and its possessions, and are *transferred to and from the United States*" in some circumstances (Compl., par. 5, R. 3-4; italics supplied). But it does not assert that any of the employees here involved are based in the United States.

court pointed out that the Act defines the carriers to which it applies as those subject to the Interstate Commerce Act, and that the latter statute is limited to transportation which " 'takes place within the United States' " (R. 17). The court also ruled that the legislative history, although somewhat ambiguous, confirms this view (R. 18). The judgment dismissing the complaint was affirmed (R. 19).

ARGUMENT

The decision of the court below on the merits is clearly correct.[3] The jurisdiction of the National Mediation Board over labor relations between air carriers and their employees is established by Title II of the Railway Labor Act, 49 Stat. 1189, 45 U. S. C. 181 *et seq.* Section 202 of the Act, 45 U. S. C. 182, provides as follows:

> The duties, requirements, penalties, benefits, and privileges prescribed and established by the provisions of title I of this Act, except section 3 thereof, shall apply to said carriers by air and their employees *in the same manner and to the same extent* as though such carriers and their employees were specifically included within the definition of "carrier" and "employee", respectively, *in section 1 thereof.* [Italics supplied.]

[3] The court's holding that the type of determination of the National Mediation Board here involved is subject to judicial review is open to question. *Switchmen's Union* v. *National Mediation Board,* 320 U. S. 297; cf. *General Com-*

Section 1 of the Railway Labor Act limits the term "carrier" to include only those carriers subject to Part I of the Interstate Commerce Act, with exceptions not material here. Section 1 of the latter Act (24 Stat. 379, as amended, 49 U. S. C. 1) limits its coverage to domestic transportation and transportation

> * * * from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, *but only insofar as such transportation or transmission takes place within the the United States.*[4] [Italics supplied.]

It is thus clear that the coverage provision of the Interstate Commerce Act, which has been expressly made applicable to the Railway Labor Act, precludes application of the latter to services performed outside the United States. And the Na-

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mittee v. *M-K-T. R. R. Co.*, 320 U. S. 323, 336. We do not elaborate upon that aspect of the case, however, since we believe it plain in any event that petitioners are wrong in their interpretation of the Railway Labor Act.

[4] This exclusionary provision was added to the Interstate Commerce Act by the Transportation Act of 1920 (41 Stat. 474). In 1927 this provision of the Act was held to exclude from the regulatory power of the Commission transportation within Canada which was part of a through trip from a point in Canada to a point within the United States. *News Syndicate Co.* v. *New York Central R. Co.*, 275 U. S. 179. Accord: *Lewis-Simas-Jones Co.* v. *Southern Pacific Co.*, 283 U. S. 654.

tional Mediation Board has consistently regarded its jurisdiction over railroad employees as limited to those employed within the United States and its territories. *Matter of Representation of Employees of the New York Central R. Co.,* Case No. R-1150, Apr. 15, 1945; *Matter of Representation of Employees of the Canadian Pacific Rwy. Co.,* Case No. R-1989, Mar. 25, 1948. See Appendix, *infra,* pp. 15-16.

Even if the statute were silent as to territorial coverage, however, it would not have extraterritorial effect. For statutes of Congress are presumed to apply only within the United States unless a contrary congressional intention clearly appears. *Foley Bros.* v. *Filardo,* 336 U. S. 281; *Blackmer* v. *United States,* 284 U. S. 421, 437; *New York Central R. Co.* v. *Chisholm,* 268 U. S. 29, 31; *American Banana Co.* v. *United Fruit Co.,* 213 U. S. 347, 355-357. In the *Foley Bros.* case, *supra,* language of the Eight Hour Law, 37 Stat. 137, 40 U. S. C. 324, which was universal in scope ("every contract made to which the United States * * * is a party") was held not applicable to employees of American companies working under United States contracts in Iran and Iraq. The Court noted that the rationale of the presumption against extraterritoriality is "based on the assumption that Congress is primarily concerned with domestic

conditions" (336 U. S. at 285).[5] In the present case the explicit limitations on the coverage of the Act make resort to the presumption merely cumulative. As in *United States* v. *Spelar,* 338 U. S. 217, 222 (involving the Federal Tort Claims Act, 62 Stat. 982, as amended, 28 U. S. C. 2671 *et seq.*) the "presumption [against extraterritorial application], far from being overcome here, is doubly fortified by the language of this statute and the legislative purpose underlying it."[6]

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[5] With regard to the apparently unrestricted language of the Eight Hour Law, the Court quoted with approval (336 U. S. at 287) the statement of Mr. Justice Holmes that words having universal scope "will be taken as a matter of course to mean only every one subject to such legislation, not all that the legislator subsequently may be able to catch." *American Banana Co.* v. *United Fruit Co.,* 213 U. S. 347, 357.

The Court in the *Foley* case also cited with approval an opinion of Attorney General Stone (34 Op. Atty. Gen. 257) on the application of the Eight Hour law to contracts for the repair of the United States Embassy in London (336 U. S. at 289). It agreed that Congress had expressed no intent to regulate labor conditions in foreign countries, although the power so to regulate government contracts was undoubtedly present, and the language used was without apparent limitation.

[6] The legislative history of Title II of the Railway Labor Act confirms the interpretation here placed upon it by the Board and approved by the court below. See digest of that history in the opinion of the court below (R. 18).

Petitioners quote from certain testimony at committee hearings on the bill that became the Civil Aeronautics Act two years after the enactment of Title II of the Railway Labor Act (Pet. 14-15). Obviously this testimony, even to the extent relevant to the present problem, cannot be used as

The policy reasons for limiting the application of the Railway Labor Act to the territorial jurisdiction of this country are clear. Labor relations in a particular area are obviously a matter primarily within the jurisdiction of the sovereign controlling that area. That Congress may have the power to control labor relations of its citizens abroad does not mean that it would be wise to do so. To attempt to apply the rules of American law to the thousands of persons employed by American companies throughout the world might breed endless difficulties. The conflicts between local law and the Railway Labor Act could well make carriers subject to criminal penalties no matter which law they attempted to follow. Foreign air lines operating in the United States are subject to the Railway Labor Act, and it seems clear that if they were also required to comply with inconsistent labor laws of their own countries, they might be compelled to discontinue operations here. The same result could follow with respect to United States flag carriers operating in foreign countries. True, it may be argued that the desirability of making National Mediation Board machinery

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the construction of the earlier statute. And the Civil Aeronautics Act itself does not purport to amend or increase the coverage of the Railway Labor Act. The provision quoted by petitioners (Section 401 l (4), 49 U. S. C. 481 l (4) furnishes an additional means of enforcing compliance with the Railway Labor Act (through certification proceedings) but does not extend the territorial scope of the latter Act.

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available to employees based abroad outweighs the disadvantages arising from potential conflicts with the municipal law of other countries. Congress, however, has not adopted this view.

CONCLUSION

For the foregoing reasons the judgment dismissing the complaint was properly affirmed, there is no conflict, and the petition for writ of certiorari should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Assistant Attorney General.

J. ROGER WOLLENBERG,
Special Assistant to the Attorney General.

August 1951.

APPENDIX

National Mediation Board

WASHINGTON

Case No. R-2139, Determination, March 11, 1949

In the Matter of Representation of Employees of the Pan American Grace Airways, Inc., Flight Dispatchers.

The Airline Dispatchers Association, hereinafter referred to as ALDA, filed an application with the National Mediation Board pursuant to Section 2, Ninth, of the Railway Labor Act, for an investigation of an alleged representation dispute among employees in the craft or class of Flight Dispatchers employed by Pan American-Grace Airways, Inc., hereinafter referred to as Panagra. For reference purposes this dispute has been assigned Case No. R-2139.

Panagra is a common carrier by air and holds a certificate of public convenience and necessity issued by the Civil Aeronautics Board for operation on air routes in Panama and several countries in South America. All of its operations are conducted outside the continental limits of the United States.

On November 1, 1946, the applicant organization entered into an agreement with Panagra which contains the following clause:

SECTION I—RECOGNITION

The Air Line Dispatchers Association has furnished evidence that it has been duly designated as the representative by the majority of the Flight Dispatchers employed by the Company who are United States citizens and in their behalf to negotiate and conclude an agreement with the Company covering the subjects hereinafter dealt with.

The Air Line Dispatchers Association contends that the Railway Labor Act of the United States, as amended (Title 45, Chapter 8. U. S. C. A.), applies to the recognition of the Association by the Company as the duly authorized bargaining representative of its Flight Dispatchers and to the terms and conditions of employment, including rates of pay, hours and working conditions; but, however, the Company contends that said Railway Labor Act does not apply to such relationship, negotiation, and agreement. Neither party by such recognition, negotiation, or execution of this agreement waives its respective contentions in that regard, but nevertheless the Company has recognized Air Line Dispatchers Association as such bargaining representative for the members of such craft or class of employees who are United States citizens, and with the limitation that such bargaining representation shall cover the negotiation of compensation features only.

It is apparent, therefore, that ALDA has only succeeded in obtaining a limited recognition as a

collective bargaining agent because of the basic differences between the parties as to the extent and coverage of the Railway Labor Act.

In view of the importance of the question thus presented not only to this Airline and its employees but all other airlines operating in foreign countries, the Board held a public hearing in Washington, D. C., on August 17, 1948, and caused its Notice of Hearing to be served on all airlines and labor organizations which might have an interest in the determination of this question. Full opportunity to be heard, to examine and cross-examine witnesses was afforded to all parties. Several briefs were exchanged and filed with the Board by airlines and organizations who expressed a desire to be heard on the subject.

I

The Statute

The Railway Labor Act was enacted in 1926, and basic amendments were passed by the Congress of 1934 which created the present National Mediation Board and the National Railroad Adjustment Board. In 1936 Title II was passed, which extended the scope of the Act to "every common carrier by air engaged in interstate or foreign commerce, * * *."

Since 1934, the National Mediation Board has consistently held that the only employees of common carriers by *rail* who were eligible to partici-

pate in elections conducted under its auspices were those who actually worked within the continental United States or its territories. Thus, railroad employees of U. S. rail carriers, who were based in the bordering countries of Canada or Mexico were not included in representation elections conducted under provisions of Section 2, Ninth, of the Act. Conversely, in elections involving Canadian rail operators in the United States, the only employees permitted to cast a ballot were those on this side of the border. The language of Section 1, First, of the Act when read with the provisions of the Interstate Commerce Act provide abundant support for the determinations reached by the Board involving employees of carriers by rail.

Section 201 of the Act passed by the Congress in 1936 as a part of Title II reads as follows:

> Section 201. All of the provisions of Title I of this Act, except the provisions of section 3 thereof, are extended to and shall cover every common carrier by air engaged in interstate or *foreign commerce,* and every carrier by air transporting mail for or under contract with the United States Government, and every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.

Since 1936 there has been a marked increase in the extent of self-organization on the part of the employees in the airline industry as well as an expansion of air routes by American flag carriers to all parts of the world. As a consequence of this expansion, problems similar to the one raised by the instant application have previously been considered by the Board. In the course of the investigations conducted in those cases, the Board sought and obtained the advice of the Attorney General as to the construction that should be placed by the Board on Section 201 quoted above. In the letter requesting such advice, the past policy of the Board concerning railroad employees was pointed out. In his reply, the Attorney General reviewed the legislative history of Title II of the Act and concluded as follows:

> The legislative history of Title II of the Act thus indicates neither a reason nor a congressional intention to extend, by Title II, to air carriers and their employees a coverage broader than that already extended by the Railway Labor Act (Title I) to carriers by rail and their employees.
>
> It follows from the foregoing that the rule, heretofore applied by the Board in representation disputes involving railroad employees, "which provides that employees based in foreign countries will not be voted," is equally applicable to the employees of air carriers who are subject to Title II of the Act. Since I believe that this rule applies to all foreign-

based employees, the question of their citizenship is immaterial.

On the basis of the advice of the Attorney General and its own independent investigation of this issue, the Board ruled in the earlier cases that employees based in foreign countries were ineligible to participate in elections conducted pursuant to Section 2, Ninth, of the Act.

II

Position of ALDA

The ALDA argues that the Board has been in error on this question because it fails to construe Section 201 as being not only permissive but mandatory on the Board to investigate representation disputes among employees of certificated American air carriers operating in foreign countries wherever such disputes might arise. In support of its contention, the ALDA directs attention to the words "foreign commerce" appearing in Section 201 of the Act, and says that this language must be given the same meaning as the words "foreign air commerce" defined in paragraph 20 (c) of Section 1 of the Civil Aeronautics Act as follows:

> a place in the United States and any place outside thereof * * *

Attention has also been invited to Section 401, 1 (4) of the Civil Aeronautics Act reading as follows:

> It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with Title II of the Railway Labor Act, as amended.

As an additional argument ALDA stresses the qualifications, duties and responsibilities of airline dispatchers and points out that these positions based upon parts 27 and 41 of the Civil Air Regulations as prescribed by Civil Aeronautics Board. In its operations in Latin America, Panagra employs some 20 airline dispatchers, all of whom reside and perform their services in the countries of Ecuador, Peru, Bolivia, Chile, and Argentina.[1] These positions are staffed by Panagra to conform with Civil Air Regulations in operating under its certificate of public convenience and necessity.

ALDA further contends that because Panagra operates under a United States certificate and because the dispatchers are required and licensed under regulations of an agency of the United States Government (CAB), that collective bargaining for such employees must necessarily be conducted under United States law, i.e., the Railway Labor Act.

Substantially the foregoing constitutes the principal reasons advanced by ALDA why the Board should continue its investigation in this proceeding

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[1] Tr. 114.

and ultimately certify ALDA as the collective bargaining representative of dispatchers employed by Panagra.

Position of the Carrier

1. The Congress is without the power to effectively give extraterritorial effect to a law governing the employer-employee relationship.

2. The Congress has no intention of giving extraterritorial effect to the Railway Labor Act, as amended.

3. In no event should the National Mediation Board seek to extend its jurisdiction to conduct a representation election among employees based in foreign countries.

Detailed argument in support of these points has been presented to the Board and fully considered.

Function of the Board

The National Mediation Board is an agency created by the Railway Labor Act to administer that law as Congress enacted it and may not extend its application beyond the bounds prescribed by the statute itself. It should always be guided by the words of Mr. Justice Cardozo, "We take the statute as we find it."[2]

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[2] *Anderson* v. *Wilson,* 289 U. S. 20, 27.

In examining the legislative history of Title II we find that Congress merely intended to extend the benefits and privileges of the Railway Labor Act to employees of the airline industry. The House Committee on Interstate and Foreign Commerce said, "In short, this measure provides the same machinery for mediating disputes in the air transportation industry which is now so successfully in effect on the railroads." Representative Crosser on the floor of the House said:

> * * * we believe that it is very desirable to bring the Air Pilots Association under the operation of the Railway Labor Act. That is all this bill does; nothing more. It does not change the terms of the Railway Labor Act. It simply brings the air pilots' organization within the terms of the Railway Labor Act.

Proceding on that premise, the granting of the instant application would compel the Board to exceed its statutory function by reading into Title II of the Act a legislative permission which cannot be expressly found. The Supreme Court has on many occasions refused to take such a course. In *Western Union Telegraph Co.* v. *Lenroot*, 323 U. S. 490, 508, in considering the Fair Labor Standards Act of 1938, the Court said:

> * * * Congress of course has the right to be indirect where it could be direct and to be obscure and confusing where is could be clear and simple. But had it determined to reach

> this employment, we do not think it would have done so by artifice in preference to plain terms. It is admitted that it is beyond the judicial power of innovation to supply a direct prohibition by construction. We think we should not try to reach the same result by a series of interpretations so far fetched and forced as to bring into question the candor of Congress as well as the integrity of interpretative process.

Apart from the specific language of the Railway Labor Act, it must be recognized that "all legislation is prima facie territorial."[3] Extraterritorial effect may not be given to laws by implication.[4] Moreover, this rule of law was reaffirmed by the Supreme Court in a decision handed down March 7, 1949, involving the question of applying the Federal Eight-Hour law to employees of American companies working in foreign countries.[5] In ruling that the statute was inapplicable for construction of public works in a foreign country the court said:

> The canon of construction which teaches that legislation of Congress unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States.

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[3] *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 357; *Blackmer* v. *United States*, 284 U. S. 421, 437.

[4] 50 Am. Jur. Statutes, par. 487, p. 510.

[5] *Foley Bros.* v. *Filardo*, No. 91, — U. S. — .

Further, in the decision the Court observed that:

> An intention so to regulate labor conditions which are the primary concern of a foreign country should not be attributed to Congress in the absence of a clearly expressed purpose.

The extent to which the law of one state or nation is allowed to operate within the dominion of another depends on what is commonly called "the comity of nations."[6] Thus, Panagra's certificate from CAB to operate in America would be ineffective unless arrangements were agreed to by the governments of each of the countries in which Panagra is authorized to conduct air transportation. Similarly, American Overseas Airlines has a CAB certificate to operate in Russia, but Russia has not agreed to allow the carrier to operate within its boundaries and therefore this part of the CAB certificate is ineffective.

While necessary agreements have been effected with the countries to permit Panagra to operate through South America under a United States certificate there have been no such agreements negotiated to permit application of the Railway Labor Act in those countries. Nor is it likely that the countries would agree to such procedures in view of the fact that many of them have labor laws of their own. To attempt application of the Railway Labor Act in a foreign country rather than the law of the country would be a challenge to its national sovereignty to govern within its

[6] 11 Am. Jr. Conflict of Laws, par. 4, 207.

own boundaries. In the United States we would rightly reject any attempt of a foreign government to apply its labor laws in this country.

Much reliance has been placed by ALDA on the phrase appearing in Section 201 of the Act "every common carrier by air engaged in interstate or foreign commerce." As indicated above the Board may not read into the statute a legislative permission which cannot be found. It is equally true that the Board is bound to consider the statute in its entirety and may not segregate any portion thereof from the entire context to support a conclusion. Accordingly Section 201 cannot be divorced from Section 202 in the search for the intent of Congress. Treated in their proper relation to one another, it is found that employees of carriers by air are granted the same benefits and privileges as are employees of carriers by rail and nothing more. The inclusion of the words "foreign commerce" is insufficient, in the opinion of the Board, to form the basis for a conclusion that *additional* benefits and privileges should be extended to employees of carriers by air.

The contention that the Railway Labor Act must be construed with certain sections of the Civil Aeronautics Act overlooks the fact that the Civil Aeronautics Act was not approved by Congress until 1938. It must be admitted therefore that when Congress was considering the amendments to the Railway Labor Act in 1936 it did not have before it the question of any interrelation between

the two Acts. It follows that the argument that Title II of the Railway Labor Act and Section 1 of 401 of the Civil Aeronautics Act must read together is without merit.

ALDA contends that chaos will ensue if dispatchers are denied the collective bargaining protections of the Railway Labor Act. The collective bargaining relationships enjoyed by ALDA for dispatchers employed by Panagra and other U. S. airlines operating in foreign countries are not disturbed by this determination. Such relationships were effected by negotiations and this determination does not prevent their continuance.

Conclusions

There does not appear to the Board to be any constitutional impediment on the power of the Congress to extend the rights, privileges and duties of the Railway Labor Act to employees based in foreign countries employed by United States carriers by air but in the opinion of the Board the Act as it presently exists does not grant such rights. The Board fails to find any specific direction in the Act, as amended, permitting it to extend its jurisdiction beyond the continental limits of the United States and its territories.

The application of the ALDS is hereby dismissed.

By order of the National Mediation Board.

Robert F. Cole, *Secretary.*

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